

1 AN ACT
2 RELATING TO THE HEALTH INSURANCE EXCHANGE; AMENDING TITLE 41, IDAHO
3 CODE, BY THE ADDITION OF A NEW CHAPTER 61, TITLE 41, IDAHO CODE,
4 TO CREATE A TITLE; TO STATE LEGISLATIVE PURPOSE AND INTENT; TO
5 DEFINE TERMS; TO ESTABLISH THE EXCHANGE AND BOARD; TO PROVIDE
6 FOR A PLAN OF OPERATION; TO SET FORTH POWERS AND AUTHORITY; TO
7 REQUIRE NAVIGATOR REGISTRATION; TO PROVIDE FOR REPORTING;
8 PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

9
10 Be It Enacted by the Legislature of the State of Idaho:

11
12 SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended by
13 the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 61, Title 41,
14 Idaho Code, and to read as follows:

15
16 CHAPTER 61
17 IDAHO HEALTH INSURANCE EXCHANGE ACT

18
19 41-6101. TITLE. This chapter shall be known and may be cited as the Idaho Health
20 Insurance Exchange Act.

21
22 41-6102. PURPOSE AND INTENT. It is the public policy of the state of Idaho to
23 preserve for its residents individual choice and responsibility in making health coverage
24 decisions. The purpose and intent of this chapter is to establish a state-operated, market-driven
25 health insurance exchange that will facilitate the selection and purchase of individual and small
26 employer health benefit plans and will enable Idaho consumers to take advantage of tax benefits
27 while preserving state oversight of Idaho's health insurance market. Participation in health
28 coverage through the exchange is voluntary in that no Idaho citizen or business shall be required
29 to purchase a health benefit plan through the exchange.

30
31 41-6103. DEFINITIONS. For purposes of this chapter:

32 (1) "Board" means those individuals who, acting as a board of directors of the exchange,
33 govern and act for the exchange, according to section 41-6104, Idaho Code.

34 (2) "Conflict of interest" means that by taking any action or making any decision or
35 recommendation on a matter within the authority of the board, a member of the board, or a
36 person within the member's household, or any business with which the member, or a person
37 within the member's household is associated, would receive a private pecuniary benefit or
38 detriment, unless the pecuniary benefit or detriment would apply to the same degree to a class
39 consisting of all persons within the particular class in this state.

40 (3) "Director" means the director of the department of insurance of the state of Idaho.

41 (4) "Eligible employee" means an individual employed by an eligible employer who is
42 offered coverage by an eligible employer under one or more health benefit plans offered through
43 the exchange.

44 (5) "Eligible employer" means a small employer that elects to make its full-time
45 employees eligible for one or more health benefit plans offered through the exchange, provided
46 that the small employer:

- 1 (a) Has its principal place of business in this state and elects to provide coverage through
2 the exchange to its eligible employees, wherever employed; or
3 (b) Elects to provide coverage through the exchange to its eligible employees who are
4 principally employed in this state.
- 5 (6) “Eligible individual” means an individual, including a minor, who:
6 (a) Is seeking to enroll in a health benefit plan offered to individuals through the
7 exchange;
8 (b) Resides in this state;
9 (c) At the time of enrollment, is not incarcerated, other than incarceration pending the
10 disposition of charges; and
11 (d) Is, and is reasonably expected to be, for the entire period for which enrollment is
12 sought, a citizen or national of the United States of America or an alien lawfully present
13 in the United States of America.
- 14 (7) “Exchange” means the Idaho health insurance exchange established pursuant to this
15 chapter to facilitate the purchase of health benefit plans by eligible individuals and eligible
16 employers.
- 17 (8) “Health carrier” means an entity with a certificate of authority subject to title 41,
18 Idaho Code, and subject to the jurisdiction of the director of the Idaho department of insurance,
19 that contracts or offers to contract to provide, deliver, or arrange for a health benefit plan or a
20 stand-alone dental plan, including a disability insurance company, a managed care organization
21 and a nonprofit hospital and professional health service corporation.
- 22 (9) “Health benefit plan” means a policy, contract, certificate or agreement offered or
23 issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of
24 health care services.
- 25 (a) “Health benefit plan” does not include:
26 i. Coverage only for accident, or disability income insurance, or any
27 combination thereof;
28 ii. Coverage issued as a supplement to liability insurance;
29 iii. Liability insurance, including general liability insurance and automobile
30 liability insurance;
31 iv. Workers’ compensation or similar insurance;
32 v. Automobile medical payment insurance;
33 vi. Credit-only insurance;
34 vii. Coverage for on-site medical clinics; or
35 viii. Other similar insurance coverage, specified in federal regulations issued
36 pursuant to Pub. L. No. 104-191 (Health Insurance Portability and
37 Accountability Act of 1996), under which benefits for health care services
38 are secondary or incidental to other insurance benefits.
- 39 (b) “Health benefit plan” does not include the following benefits if they are provided
40 under a separate policy, certificate or contract of insurance or are otherwise not an integral part
41 of the plan:
42 i. Limited scope dental or vision benefits;

- ii. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or
- iii. Other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

(c) "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance; there is no coordination between the provision of the benefits; and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

- i. Coverage only for a specified disease or illness; or
- ii. Hospital indemnity or other fixed indemnity insurance.

(d) "Health benefit plan" does not include the following if offered as a separate policy, certificate or contract of insurance:

- i. Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;
- ii. Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)); or
- iii. Similar supplemental coverage provided to coverage under a group health plan.

(10) "Navigator" means a person who assists with eligibility, enrollment, program specifications and public education activities related to the exchange.

(11) "Person" means an individual or a business or other private or public legal entity.

(12) "Producer" means a person required to be licensed under chapter 10, title 41, Idaho Code, to sell, solicit or negotiate disability insurance.

(13) "Small employer" means a person who employed an average of at least one (1) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least one (1) employee on the first day of the plan year.

(14) "Stand-alone dental plan" means a limited scope dental plan by a health carrier that is licensed to offer dental coverage, but need not be licensed to offer other health benefits, which plan shall be limited to dental and oral health benefits, without substantially duplicating the benefits typically offered by health benefit plans not providing dental coverage, but which provides, at a minimum, pediatric dental and oral health benefits.

41-6104. ESTABLISHMENT OF THE EXCHANGE AND BOARD. (1) There is hereby created an independent public body corporate and politic to be known as the Idaho health insurance exchange, which shall be available to eligible individuals and eligible employers. The exchange will perform an essential governmental function in the exercise of powers conferred upon it in this chapter.

(2) The exchange created by this chapter shall operate subject to the supervision and control of its board. The board shall consist of thirteen (13) total members, with eleven (11) voting members. Subject to the provisions of this section, members of the board shall

1 collectively offer expertise, knowledge and experience in health benefits administration, health
2 care finance, health plan purchasing, health care delivery system administration, public health,
3 and health policy issues related to small employer and individual markets and the uninsured. A
4 majority of the board shall not collectively represent health carriers or producers. Nine (9)
5 members shall be appointed to the board by, and serve at the pleasure of, the governor. The
6 members appointed to the board by the governor shall be subject to confirmation by the senate. If
7 any appointment is made during the recess of the legislature it shall be subject to confirmation by
8 the senate during its next ensuing session. In selecting the nine (9) members of the board, the
9 governor shall appoint: three (3) members representing different health carriers; two (2)
10 members representing producers; one (1) member representing individual consumer interests;
11 one (1) member representing small employer business interests employing between one and ten
12 employees; one (1) member representing small employer business interests employing between
13 eleven and twenty-five employees; and one (1) member representing small employer business
14 interests employing twenty-six or more employees. One (1) member shall be a member of the
15 senate appointed by the president pro tempore of the senate, and one (1) member shall be a
16 member of the house of representatives appointed by the speaker of the house. The director or
17 his designated representative and the director of the state department of health and welfare or his
18 designated representative shall each serve as ex officio non-voting members of the board.

19 (3) The nine (9) board members appointed by the governor shall each serve a term of four
20 (4) years or until his successor is appointed. A board member may be appointed by the governor
21 to serve subsequent terms. Legislative members of the board shall serve for a term of two (2)
22 years. A vacancy in a member's position on the board shall be filled in the same manner as the
23 original appointment.

24 (4) The board shall elect a chairman and vice chairman from among the voting members.
25 The board shall meet at the times and places as determined appropriate by the chair or vice chair
26 in the absence or inability of the chair to serve. Notice to board members of meetings shall be
27 given according to procedures established by the board. A majority of the voting members of the
28 board shall constitute a quorum for the transaction of business.

29 (5) The exchange is deemed:

30 (a) A public agency for the purposes of the open meeting law, chapter 23, title 67, Idaho
31 Code;

32 (b) A state agency for the purposes of the public records law, chapter 3, title 9, Idaho
33 Code; and

34 (c) A governmental entity for the purposes of the Idaho tort claims act, chapter 9, title 6,
35 Idaho Code.

36 (6) Any board member or employee who acts on behalf of the exchange shall act as a
37 fiduciary. Such person shall ensure that the exchange is operated in the interests of eligible
38 individuals and eligible employers and their eligible employees participating in health benefit
39 plans offered through the exchange and for the purpose of facilitating the determination of
40 eligibility for and enrollment in health benefit plans and other health coverage as may be
41 provided by other applicable law.

42 (7) Whenever a member of the board has a conflict of interest on a matter that is before
43 the board, the member shall disclose it, abstain from any vote on the matter and shall also
44 comply with any additional requirements established pursuant to the plan of operation.

45 (8) Neither members of the board nor employees of the exchange, if any, shall be:

1 (a) Considered employees of the state of Idaho by virtue of their service on the board or
2 employment by the exchange except for purposes of the Idaho tort claims act, chapter 9,
3 title 6, Idaho Code;

4 (b) Eligible for or entitled to benefits from the public employee retirement system of
5 Idaho;

6 (c) Subject to or entitled to benefits from the provisions applicable to classified
7 employees, chapter 53, title 67, Idaho Code; or

8 (d) Subject to or entitled to benefits from the provisions applicable to non-classified
9 employees of chapter 16, title 59, Idaho Code.

10 Nothing in this chapter shall prevent a member of the board who is otherwise a current or former
11 state employee from receiving his usual state compensation and benefits while serving on the
12 board. Members of the board who are not otherwise state employees shall be entitled to receive
13 compensation for service as prescribed in section 59-509(n), Idaho Code.

14 (9) The board and the exchange shall not be subject to the purchasing statutes and rules of
15 the state of Idaho.

16 (10) In addition to the power set forth in section 41-6106, Idaho Code, to designate
17 advisory committees in its discretion, the board shall appoint an advisory committee consisting
18 of medical providers to aid the board in its duties. The board shall designate at least one of its
19 members to serve as a liaison to the provider advisory committee. The members of the provider
20 advisory committee shall include at least one member duly licensed as, employed by or
21 representing the following types of health care providers:

22 (a) Community health centers;

23 (b) Dentists;

24 (c) Hospitals;

25 (d) Pharmacists;

26 (e) Physicians; and

27 (f) Any other category of health care provider the board believes would be helpful to
28 include on the committee.

29
30 41-6105. EXCHANGE PLAN OF OPERATION. (1) The board shall consult with
31 interested parties, stakeholders, advisory committees and other persons as necessary and
32 appropriate to develop and, upon no less than twenty-one (21) days' notice to be provided
33 pursuant to section 67-2343, Idaho Code, and in an open meeting, adopt no later than December
34 1, 2012, a plan of operation for the exchange that will establish requirements or guidelines for
35 participation in the exchange and procedures for the fair, equitable and efficient administration
36 and operation of the exchange consistent with the requirements, purpose and intent of this
37 chapter. The exchange plan of operation may be amended at any time by the board consistent
38 with the requirements, purpose and intent of this chapter and after complying with the notice
39 required for initial adoption.

40 (2) The exchange plan of operation shall:

41 (a) Set forth policies and procedures for operation of and any requirements for
42 participation in the exchange that will include health benefit plans and stand-alone dental
43 plans to be made available to eligible individuals and eligible employers to assist Idaho
44 residents and small employers in selecting and enrolling in health benefit plans.

45 (b) Establish procedures and functions for the exchange as deemed necessary and
46 appropriate by the board to prevent the establishment of a health insurance exchange

1 created or operated by or on behalf of the federal government of the United States of
2 America in Idaho.

3 (c) Provide mechanisms for assisting eligible individuals and eligible employers in
4 comparing, selecting and enrolling in health benefit plans and stand-alone dental plans
5 offered through the exchange, including but not limited to: use of a telephone hotline,
6 internet portal and other resources; establishment of guidelines and procedures allowing
7 producers to assist eligible individuals and eligible employers in purchasing health
8 benefit plans through the exchange; establishment of standardized formats for listing and
9 explaining plan benefits, systems for rating, categorizing and comparing health benefit
10 plans to facilitate plan comparisons, and providing information to eligible individuals and
11 eligible employers concerning the availability of tax benefits and public or private
12 programs that may make health coverage more affordable.

13 (d) Provide for the selection of persons qualified to serve as navigators to assist
14 individuals and employers with eligibility, enrollment, program specifications and public
15 education activities related to the exchange.

16 (e) Identify sources of revenue to fund the operating costs of the exchange to make it self-
17 sustaining, which may include fees from health carriers, exchange users and participants
18 as determined to be necessary and appropriate by the board.

19 (f) Establish the fiscal year for the exchange and provide for maintaining an accurate
20 accounting of all activities, receipts and expenditures of the exchange, which shall be
21 reported to the governor and the legislature in accordance with this chapter, and to others
22 as deemed appropriate by the board.

23 (g) Establish procedures for purchasing and contracting for necessary goods and services
24 that are fiscally responsible.

25 (h) In cooperation with the director, establish risk spreading and risk adjustment
26 programs within the exchange.

27 (i) Provide for any other matter deemed necessary and appropriate by the board not
28 inconsistent with this chapter.

29
30 41-6106. POWERS AND AUTHORITY. (1) Unless otherwise required by this chapter,
31 in the discretion of the board, the exchange shall have the following powers and authority to:

32 (a) Develop and implement the exchange plan of operation.

33 (b) Enter into contracts with persons who are necessary or appropriate to develop and
34 implement the plan of operation and fulfill the requirements, purpose and intent of this
35 chapter.

36 (c) Appoint a manager, whose duties, subject to the direction and supervision of the
37 board, shall be to conduct and oversee the operations and administration of the exchange.
38 If appointed, the manager shall serve at the pleasure of the board. The manager shall have
39 such powers as are necessary to carry out the duties of the exchange, subject to policy
40 direction of the board and within financial limits established by the board, including the
41 employment, supervision, and termination of other employees as may be deemed
42 necessary.

43 (d) Receive and share information including, but not limited to, information that is
44 confidential and exempt from public disclosure from and with persons. This includes the
45 authority to share information as may be necessary to effect tax credits or cost sharing
46 reductions to the benefit of Idaho eligible individuals or eligible employers and to prevent

1 the establishment or operation of an exchange by or on behalf of the federal government
2 of the United States of America. Prior to sharing confidential information, the exchange
3 shall ensure that the recipient understands the confidential nature of the information and
4 agrees to maintain the confidentiality of the information. The exchange shall provide for
5 appropriate levels of security to protect information.

6 (e) Make health benefit plans and stand-alone dental plans offered by health carriers
7 lawfully operating in the state of Idaho available to eligible individuals and eligible
8 employers in accordance with the exchange plan of operation. The board shall consider
9 the feasibility of providing, with a goal of establishing, a defined contribution health
10 benefit plan option to eligible employers.

11 (f) Appoint appropriate legal, actuarial, technical and other committees as necessary and
12 appropriate to provide assistance in the development of the plan of operation of the
13 exchange and any function within the authority of the exchange.

14 (g) Assess and collect fees from health carriers, exchange users and participants and
15 receive funds from other sources of revenue including grant funds according to
16 rulemaking as authorized by this chapter. The exchange fees and any grant funds imposed
17 or collected pursuant to the operation of the exchange shall at all times be free from
18 taxation of every kind and shall be used solely for the purposes of this chapter. On an
19 interim basis prior to the establishment of the exchange plan of operation, the exchange
20 may receive and utilize grant funds.

21 (h) Take any legal action necessary or appropriate to recover any amounts lawfully owed
22 the exchange or otherwise consistent with this chapter.

23 (i) Obtain a line of credit from a licensed financial institution as may be reasonable and
24 necessary to fulfill the requirements of this chapter. Neither any member of the board, nor
25 any employee of the exchange if any, shall be liable for any obligations of the exchange.

26 (j) The exchange may collaborate with, and the director may promulgate, rules
27 implementing risk spreading and risk adjustment measures.

28 (k) The exchange shall not permit a health carrier to offer any health benefit plan through
29 the exchange that does not comply with the applicable laws of this state.

30 (2) The exchange powers and authority shall be subject to the following limitations:

31 (a) The exchange shall be a voluntary marketplace with the purpose of preserving
32 individual choice and facilitating the informed selection and purchase of quality health
33 benefit plans by eligible individuals, eligible employers, and eligible employees. Neither
34 the exchange nor any agency of the state of Idaho shall require any person to use or
35 participate in the exchange nor have the authority to impose upon or collect from a
36 person any penalty for failure or refusal to participate in or to purchase health benefit
37 plans from or through the exchange.

38 (b) The exchange shall not be used to implement or enforce any requirement for the
39 mandatory purchase of health insurance.

40 (c) The exchange shall not be used to implement or enforce any penalty arising from an
41 individual's or employer's decision not to purchase health insurance.

42 (d) The exchange shall not prohibit a health carrier from participating or a health benefit
43 plan from being sold in the exchange if the health carrier or health benefit plan meets all
44 requirements of applicable Idaho law and the exchange plan of operation.

45 (e) The exchange shall not attempt to prohibit or preclude a health carrier from offering
46 health insurance coverage outside the exchange; however, the director, after review by

1 and consultation with the exchange, may impose requirements on health carriers offering
2 health benefit plans offered inside or outside the exchange to prevent adverse selection.

3 (f) Nothing in this chapter or the plan of operation shall prohibit or preclude a health
4 carrier from offering health insurance coverage outside of the exchange to any individual
5 or small employer, including eligible individuals and eligible employers, nor shall this
6 chapter or the plan of operation be interpreted to prohibit or preclude any individual,
7 including any eligible individual, from enrolling in, or any small employer, including any
8 eligible employer, from selecting for its employees, including its eligible employees, a
9 health benefit plan or other insurance coverage offered outside of the exchange.

10 (3) Nothing in this chapter shall be construed or interpreted to permit the abrogation or
11 preemption of the authority of the director pursuant to title 41, Idaho Code, and rules adopted in
12 accordance therewith, except to the extent such action by the exchange may specifically be
13 authorized pursuant to this chapter. The director is authorized to promulgate rules as necessary or
14 appropriate to carry out the purpose and intent of this chapter and the plan of operation adopted
15 in accordance therewith. The director and the director of the state department of health and
16 welfare are authorized to assist the board in carrying out the responsibilities and duties of this
17 chapter consistent with their respective statutory duties and authority. This includes, but is not
18 limited to, the director's authority to review health benefit plans and health carrier rates to be
19 sold inside the exchange for conformance to the provisions of the plan of operation, rules or
20 other applicable law consistent with the intent and provisions of this chapter.

21
22 41-6107. NAVIGATORS. (1) A person shall not act as a navigator in this state unless
23 the person is registered with the director as a navigator. Application shall be made on forms
24 prescribed by the director, and the applicant shall pay a fee to the director set forth by rule. Prior
25 to registering an applicant as a navigator, the director shall determine based on the application
26 that the person has the qualifications and ability to serve as a navigator. An individual employed
27 by or affiliated with a registered navigator need not hold a separate individual navigator
28 registration, however, the applicant for and navigator seeking renewal of registration may be
29 required to demonstrate that the individuals acting for it have met training or other education
30 standards or classes acceptable to the director. The director may prescribe by rule any necessary
31 continuing education or training requirements for navigators.

32 (2) A navigator registration shall be valid for two years and be subject to renewal upon
33 application to the director on forms prescribed by the director and payment of a fee as set forth
34 by rule.

35 (3) The provisions of chapters 1, 2, and 13, of title 41, and sections 41-1008, 41-1016,
36 41-1021, Idaho Code, and any related rules, shall apply to navigators. For purposes of this
37 chapter and the application of other provisions of title 41, Idaho Code, the duties of a navigator
38 shall be deemed to constitute transacting the business of insurance.

39 (4) All persons acting as, employed by, or affiliated with a navigator who are facilitating
40 enrollment in qualified health plans, which activities include conduct amounting to selling,
41 soliciting or negotiating insurance shall be licensed producers as required by and subject to
42 chapter 10, title 41, Idaho Code, and any related rules.

43
44 41-6108. REPORT. The exchange shall submit a full report of its activities and the
45 condition of the individual and small employer exchange market to the governor, the director of
46 legislative services for distribution to the legislative council, and the chairs of the legislative

1 health care task force and germane committees of both chambers on or before July 1, 2017, and
2 annually on or before each July 1 thereafter.
3

4 41-6109. SEVERABILITY. The provisions of this act are hereby declared to be
5 severable and, if any provision of this act or the application of such provision to any person or
6 circumstance is declared invalid for any reason, such declaration shall not affect the validity of
7 the remaining portions of this act.
8

9 41-6110. EFFECTIVE DATE. An emergency existing therefor, which emergency is
10 hereby declared to exist, this act shall be in full force and effect on and after its passage and
11 approval.
12